

Rule 29A. Visual recording of statement or testimony of child victim or witness of sexual or physical abuse - Conditions of admissibility.

(a) In any delinquency proceeding or proceeding under Section 78-3a-602 or Section 78-3a-603 concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or witness younger than 14 years of age may be recorded prior to the filing of a petition, and upon motion and for good cause shown is admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(a)(1) no attorney for either party is in the child's presence when the statement is recorded;

(a)(2) the recording is visual and aural and is recorded on film or videotape or by other electronic means;

(a)(3) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

(a)(4) each voice in the recording is identified;

(a)(5) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(a)(6) the minor defendant and the minor's defendant's attorney are provided an opportunity to view the recording before it is shown to the court;

(a)(7) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; and

(a)(8) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (b) or (c), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this subsection "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.

(b) In any proceeding concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of the prosecution and for good cause

shown, that the testimony of any witness or victim younger than 14 years of age be taken in a room other than the courtroom. All of the following conditions shall be observed:

(b)(1) Only the judge, attorneys for each party, persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be with the child during the testimony. The minor defendant may also be present during the child's testimony unless the minor defendant consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the minor's defendant's presence, or that the child's testimony will be inherently unreliable if required to testify in the minor's defendant's presence. If the court makes that determination, or if the minor defendant consents:

(b)(1)(A) the minor defendant may not be present during the child's testimony;

(b)(1)(B) the court shall ensure that the child cannot hear or see the minor defendant;

(b)(1)(C) the court shall advise the child prior to testifying that the minor defendant is present at the trial and may listen to the child's testimony;

(b)(1)(D) the minor defendant shall be permitted to observe and hear the child's testimony, and the court shall ensure that the minor defendant has a means of two-way telephonic communication with defense counsel during the child's testimony; and

(b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(b)(2) Only the judge and attorneys may question the child.

(b)(3) As much as possible, persons operating equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of the prosecution and for good cause shown, that the testimony of any witness or victim younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

63 (c)(1) the recording is both visual and aural and recorded on film or videotape or by
64 other electronic means;

65 (c)(2) the recording equipment is capable of making an accurate recording, the
66 operator is competent, and the recording is accurate and is not altered;

67 (c)(3) each voice on the recording is identified; and

68 (c)(4) each party is given an opportunity to view the recording before it is shown in
69 the courtroom.

70 (d) If the court orders that the testimony of a child be taken under Subsection (b) or
71 (c), the child may not be required to testify in court at any proceeding where the
72 recorded testimony is used.

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